

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RASHEEM S. HARRIS,

Plaintiff,

v.

ORDER
05-CV-40S

LAURENCE J. HIGLEY, ET AL.,

Defendants.

1. Pro Se Plaintiff Rasheem S. Harris commenced this civil rights action against Defendants on January 21, 2005. On June 20, 2008, Defendants filed a Motion for Summary Judgment (Docket No. 61), which this Court referred to the Honorable Hugh B. Scott, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), on June 26, 2008 (Docket No. 69).

2. On November 4, 2008, Judge Scott filed a Report and Recommendation, in which he recommends that (1) Defendants' Motion for Summary Judgment on exhaustion grounds be denied, but (2) Defendants' Motion for Summary Judgment on all other grounds be granted. (Docket No. 77.)

3. On November 19, 2008, Plaintiff filed Objections to Judge Scott's Report and Recommendation (Docket No. 78), to which Defendants responded on December 19, 2008 (Docket No. 80).¹

4. Having carefully reviewed the Report and Recommendation, the pleadings and materials submitted by the parties, and Plaintiff's objections, this Court will accept

¹ Pursuant to the Scheduling Order relative to Plaintiff's Objections, Plaintiff had the opportunity to file a reply memorandum on or before January 5, 2009. (See Docket No. 79.) He did not do so.

Judge Scott's recommendations. This Court concurs in Judge Scott's conclusion that Defendants' waived their exhaustion defense, but that the remaining arguments warrant granting summary judgment in Defendants' favor. Accordingly, Defendants' Motion for Summary Judgment will be granted.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 77) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Plaintiff's Objections (Docket No. 78) are DENIED.

FURTHER, that Defendants' Motion for Summary Judgment (Docket No. 61) is GRANTED consistent with Judge Scott's Report and Recommendation.

FURTHER, that the Clerk of the Court shall close this case.

SO ORDERED.

Dated: January 21, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge